

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

\_\_\_\_\_  
KARKANIAS RESEARCH, LLC d/b/a/ CYTIRA,  
and GEORGE KARKANIAS, a/k/a CYTIRA, INC.

Plaintiffs,

-against-

LIFESPAN BIOSCIENCES, INC.,

\_\_\_\_\_  
Defendant X

DECLARATION OF MICHELLE  
BARBO IN REPLY TO  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT LIFESPAN'S  
MOTION TO DISMISS COMPLAINT  
OR, IN THE ALTERNATIVE, TO  
TRANSFER VENUE

I, Michelle Barbo, declare as follows:

1. I am employed by LifeSpan BioSciences, Inc. ("LifeSpan"), as Director of Contract Administration. My office address is 2401 Fourth Avenue, Suite 900, Seattle, Washington 98121. I make this declaration in support of defendant LifeSpan's Reply to plaintiff's Opposition to Defendant's Motion to Dismiss Complaint Or, In The Alternative, To Transfer Venue. I have personal knowledge and am competent to testify as a witness regarding the facts stated below.

2. In my capacity as LifeSpan's Director of Contract Administration, I supervised Malcolm An regarding his communications between LifeSpan and George Karkanias as to the immunohistochemistry (IHC) research study being performed by LifeSpan for Mr. Karkanias. In his numerous e-mail communications, Mr. Karkanias did not mention that the research study being performed by LifeSpan was part of a larger National Institute of Health ("NIH") sponsored project to study diabetes-induced reproductive problems in women. LifeSpan was not made aware of the specific purpose of the research study being performed by LifeSpan for Mr. Karkanias or the source of funding for the research study.

3. Two of the eight antibodies selected for use in the research study were to be obtained from Santa Cruz Laboratories. As explained at Paragraph 4 on page 2 of my July 30, 2007 Declaration, Santa Cruz Laboratories will not sell antibodies to LifeSpan. Therefore, it was necessary for Mr. Karkanias to purchase these two antibodies from Santa Cruz Laboratories.

LifeSpan had no involvement with the purchase of these two antibodies and had no responsibility for payment of the purchase price to Santa Cruz Laboratories. The two antibodies to be obtained from Santa Cruz Laboratories were listed at page 2 of the Research Agreement as Antibody #2: Anti-ER Alpha and Antibody #4: Anti-ER Beta. The Research Agreement in the section entitled TOTAL COST at the top of page 5 states, "The price for purchasing the eight commercial antibodies will be added to the final invoice." After Mr. Karkanias purchased the two antibodies from Santa Cruz Laboratories, LifeSpan did not bill Mr. Karkanias for the two antibodies. A copy of LifeSpan's invoice dated 3/30/07 is attached as Exhibit A. At page 2 of the invoice is a list of the six other antibodies provided by LifeSpan for which LifeSpan billed Mr. Karkanias. There is no billing for Antibody #2: Anti-ER Alpha and Antibody #4: Anti-ER Beta obtained by Mr. Karkanias from Santa Cruz Laboratories.

4. In order to download the study results from LifeSpan's website, Mr. Karkanias first had to provide LifeSpan with an IP address ("Internet Provider address"). The IP address given by Mr. Karkanias to LifeSpan was 68.45.40.126. After LifeSpan received this IP address from Mr. Karkanias, LifeSpan assigned Mr. Karkanias a password so that he could download the study results from LifeSpan's website. Mr. Karkanias only could do the download of data from LifeSpan's website by using the specific IP address that he had given to LifeSpan.

5. LifeSpan sells certain antibodies at retail, but does not sell research services through its website. A customer must make direct contact with a representative of LifeSpan to negotiate the terms of a research agreement.

6. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 19<sup>th</sup> of September, 2007 at Seattle, Washington.

  
Michelle Barbo

Exhibit A



2401 4th Avenue, Suite 910, Seattle, WA 98121

**INVOICE**

Invoice Number: 106658

Invoice Date: 03/30/07

Page: 1

CYTIRA INC.  
305 Madison Avenue  
Suite 449  
New York, NY 10165

Due Date: 04/29/07  
Terms: Net 30 days  
Customer ID: CYTI 01A

P.O. Number:  
Contract Date: 10/30/06  
Scientific Contact: George Karkanas

Description	Quantity	Total Price
Final 50% Fee for Phase I	1	3,220.00
Final 50% Fee for Phase II Materials Tissue Preparation + Validation	1	945.00
Final 50% Fee for Phase II Materials Tissue Mapping	1	900.00
Final 50% Fee for Phase II Setup Fee	1	225.00
Final 50% Fee for Phase II IHC, Analysis and Reporting	1	10,872.00
Credit for missing brain region \$100 per 1 missing VLH region \$100 x 6 tissues x 4 antibodies	-1	-2,400.00
Full Fee for 8 commercial antibodies	1	5,952.95
Full Fee for reports and images on CD-ROM	1	75.00

**Wiring Instructions:** (Please reference invoice number(s) on wire transfers.)

Bank Name: Silicon Valley Bank  
Address: 3003 Tasman Drive, Santa Clara, CA 95054 USA  
ABA/Routing #: 121140399  
Swift Code: SVBUS6S  
Beneficiary: LifeSpan BioSciences, Inc.  
Account #: 3300176829

Subtotal: 19,789.95  
Sales Tax: 0.00  
Total (USD): 19,789.95

**NOW ACCEPTING VISA / MASTERCARD**

